



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, OPC, MT, CNC, MNDC, FF, O

Introduction

This hearing dealt with two related applications. One was the tenant's application for orders setting aside a 1 Month Notice to End Tenancy for Cause, allowing him more time in which to file that application, and granting him a monetary order. The other was the landlord's application for an order of possession. Both parties appeared and had an opportunity to be heard. I found that all evidence had been properly served by each party on the other.

Issue(s) to be Decided

- Should the tenant be granted an extension of time in which to file his application disputing the notice to end tenancy?
- If so, does the landlord have grounds under the *Residential Tenancy Act* to end this tenancy?

Background and Evidence

This tenancy commenced February 1, 2013 as a two year fixed term tenancy ending February 1, 2014. The monthly rent of \$450.00 was due on or before the 1st day of the month. The tenant paid no security deposit or pet damage deposit.

On December 10, 2013, the parties signed a new three year fixed term tenancy agreement starting February 2, 2014 and ending on February 2, 2017. The rent remained at \$450.00 but the payment date was changed to the 10th day of every month. No deposit was paid by the tenant. Only the tenant is named on the tenancy agreement.

In the summer and fall of 2014 the landlord, who lives in Ontario, became concerned that the tenant had moved out of the rental unit without notice and had moved someone else into the unit. He based this conclusion upon the following events:

- In July the landlord's agent reported to the landlord that the tenant had advised that he was revoking the lease and would be moving out in October.
- The August and September rent cheques were mailed from Kamloops.

- In October SH contacted his real estate agent and made an offer to purchase the rental unit. She told the agent that the tenant had moved out and she had moved in.
- SH then called the landlord to ask if she could rent the unit. He refused her request.
- On December 7 SH called the landlord's spouse and advised that she and her son had moved into the unit.
- Registered mail sent to the tenant at rental unit and to the Kamloops address was only picked up in Kamloops.

On November 3, 2014 the landlord issued a 1 Month Notice to End Tenancy for Cause and sent it to the tenant by registered mail both to the rental unit and to the Kamloops address. The tenant picked up the letter sent to Kamloops on November 7, 2014.

The reasons stated on the notice were:

- Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.
- Tenant has assigned or sublet the rental unit without landlord's written consent.

The notice also contained the following information:

- "You have the right to dispute this Notice within 10 days after you receive it by filing an Application for Dispute Resolution at the Residential Tenancy Branch. An arbitrator may extend your time to file an Application, but only if he or she accepts your proof that you had a serious and compelling reason for not filing the Application on time.
- If you do not file an Application within 10 days, you are presumed to accept this Notice and must move out of the rental unit or vacate the site by the date set out on page 1 of this Notice. (You can move out sooner.) If you do not file an Application, move or vacate, your landlord can apply for an Order of Possession that is enforceable through the court."

In a letter dated November 10 the tenant advised the landlord that he had received the 1 Month Notice to End Tenancy for Cause. He said he would be opposing the landlord's position, made some offers for settlement, and set out what his claims would be if the landlord did not accept his offer.

By a letter dated November 18 the landlord rejected the tenant's offer. According to the records of Canada Post the letter was mailed on November 18 and picked by the tenant in Kamloops on December 3, after a final notice had been given by Canada Post.

The tenant filed his application for dispute resolution on Monday, December 8.

The tenant testified that:

- He never told the landlord that he intended to move out.
- He and SH were married in 2007 and divorced in 2010.
- For the past five years they have lived together at the rental unit. Their only separations are when they are required to be absent for work.
- He is a paralegal, who does legal research. He has been staying in Kamloops and one other community only because that is the location of his current project. The rental unit is his home.
- He was the only tenant named on the tenancy agreements.
- SH would like to buy the rental unit because she had built with it with her former husband.

In his evidence the tenant filed copies of the insurance contract for the rental unit, B C Hydro and Telus bills for this property, all of which are in his name and are sent to the rental unit.

The tenant testified that he read the part of the notice that set out the time limit for filing an application disputing the notice. However, he wanted to try to resolve the dispute with the landlord and was confident that the landlord would accept his offer. The negotiation was extended because it was conducted by mail. When the landlord did not, he decided to file his application. He was confident that any court would grant the extension because the delay was caused by his efforts to negotiate a settlement.

Payment of the rent due on December 10 was sent to the landlord by SH on a cheque drawn on a bank account held jointly by the tenant and SH. The tenant explained why a cheque instead of a money order (as specified by the tenancy agreement) had been tendered.

Analysis

Section 47(4) of the *Residential Tenancy Act* states that a tenant who receives a 1 Month Notice to End Tenancy for Cause may dispute it by filing an application for dispute resolution within ten days after the date the tenant receives the notice.

Subsection (5) states that a tenant who does not make an application for dispute resolution within the required time:

- is conclusively presumed to have accepted that the tenancy end on the effective date of the notice; and,

- must vacate the rental unit by that date.

Section 66(1) allows an arbitrator to extend a time limit established by the Act only in exceptional circumstances. Subsection (3) further limits an arbitrator's powers by stating that an arbitrator must not extend the time limit to make an application for dispute resolution beyond the effective date of the notice.

The monthly rent was due on the 10th day of the month. Pursuant to section 47(2) the effective date of a 1 Month Notice to End Tenancy received before the 10th day of November is the 9th day of December, being the day before the day in the month that rent is payable under the tenancy agreement. Accordingly, if I find that exceptional circumstances exist in this case, I may extend the time for filing the tenant's application to the date that it was filed, December 8.

The *Residential Tenancy Policy Guidelines*, available on-line at the Residential Tenancy Branch web site, provide succinct summaries of the legislation and the common law applicable to residential tenancies in British Columbia. The Guideline that is applicable to this dispute is *Residential Tenancy Policy Guideline 36: Extending a Time Period*.

That *Guideline* states:

“The word ‘exceptional’ means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word ‘exceptional’ implies that the reason for failing to do something at the time required is very strong and compelling.”

The *Guideline* sets out examples of what might and might not be considered “exceptional” circumstances. Being in the hospital at the relevant time is given as an example of “exceptional” circumstances.

The *Guideline* then sets out the criteria which would be considered by an arbitrator in making a determination as to whether or not there were exceptional circumstances including:

- The party did not wilfully fail to comply with the relevant time limit.
- The party had a *bona fide* intent to comply with the relevant time limit.
- Reasonable and appropriate steps were taken to comply with the relevant time limit.
- The failure to meet the relevant time limit was not caused or contributed to by the conduct of the party.
- The party has filed an application which indicates there is merit to the claim.

- The party has brought the application as soon as practical under the circumstances.

In this case the tenant described himself as working in the legal field and acknowledged that he read the information on the notice to end tenancy about the time limit. His reason for not filing his application earlier is that he wanted to negotiate an agreement with the landlord and was confident that his offer would be accepted. It was only after his offer was rejected that he proceeded with his application for dispute resolution.

Filing an application for dispute resolution does not preclude the parties from negotiating. The tenant could have easily protected his position by filing an application for dispute resolution within the required time and still made his offer to the landlord.

The delay in filing the application was a conscious decision made by the tenant. He could have filed his application at any time however he assumed his offer would be accepted and he assumed that an extension of time would be granted. He made no effort to meet the relevant time limit.

The tenant did not act with any haste at any point in the proceedings. He waited three days to send his offer to the landlord after he received the notice to end tenancy and he waited five days to file his application for dispute resolution after receiving the letter from the landlord rejecting his offer. Further, there is no evidence of the tenant exploring the possibilities of settlement by calling the landlord on the telephone and finding out whether there was any point to submitting a more formal offer by letter.

Finally, there is nothing “exceptional” about parties hoping to resolve a dispute before the date set for a hearing or making some efforts towards that goal between the filing of an application for dispute resolution and the date set for a hearing.

I find that the tenant has not established that exceptional circumstances were the reason for his failure to file his application disputing the notice to end tenancy within the required time period. Accordingly, the tenant's application for an extension of time in which to file an application disputing the 1 Month Notice to End Tenancy for Cause is dismissed.

As the tenant did not file the application within the required time limit section 47(4) applies and the tenancy ended on the effective date of the notice. The landlord is entitled to an order of possession for the rental unit.

At the hearing there was discussion about payment of the rent due on December 8 and January 8. The landlord was advised that he could accept payment of rent but should

give a written receipt for any payment that included the words “for use and occupancy only”.

I have no information as to whether any payment was made after the hearing concluded. As a result, the order of possession that is being provided to the landlord states that it is effective two days after service on the tenant. If the tenant has paid the rent to February 9, 2015 the landlord will not be able to enforce the order of possession until after that date. He may serve the order on the tenant at any time.

The tenant’s claim for a monetary order in the amount of \$10,000.00 is dismissed.

As the landlord was successful on his application he is entitled to reimbursement from the tenant of the \$50.00 fee he paid to file it. Ordinarily the order would be that this amount may be deducted from the security deposit held by the landlord but since no security deposit was paid by the tenant the landlord is granted a monetary order in the amount of \$50.00.

Conclusion

- a. The tenant’s application for an extension of time in which to file an application disputing a notice to end tenancy is dismissed.
- b. The landlord is granted an order of possession. If necessary, this order may be filed in the Supreme Court of British Columbia and enforced as an order of that court.
- c. The landlord is granted a monetary order. If necessary, this order may be filed in the Provincial Court of British Columbia and enforced as an order of that court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 16, 2015

Residential Tenancy Branch

